



November 15, 2002

Mr. Steve Aragon
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2002-6526

Dear Mr. Aragon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171526.

The Texas Health and Human Services Commission (the "commission") received a request for "prescription level electronic information" relating to the pharmaceutical prescription rebate program of the state Medicaid system, beginning with the fourth quarter of 2001 and continuing through the present. You indicate that the requestor previously requested similar information on a quarterly basis for the years 1998 and 1999 from the Texas Department of Health, and you note that this office addressed that request in Open Records Letter No. 99-1421 (1999). In that ruling, this office determined that certain documents related to clients, applicants, and recipients of Medicaid assistance programs must be withheld under section 552.101 of the Government Code. You inquire whether Open Records Letter No. 99-1421 (1999) constitutes a previous determination with respect to the information at issue in the present request. We have considered the comments you have submitted and reviewed the submitted representative sample of information.¹

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.301 of the Government Code provides the procedures the commission must follow in responding to a request for information under the Public Information Act (the "Act"). Section 552.301 of the Government Code states in pertinent part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Thus, a governmental body must ask this office whether requested information is excepted from required disclosure whenever a governmental body seeks to withhold information responsive to a request, unless the information at issue is subject to a previous determination of this office.

This office defined "previous determination" under the Act in Open Records Decision No. 673 (2001). The first instance of a previous determination under section 552.301(a) pertains to specific information that has been previously requested from a governmental body and this office has issued a decision that evaluates the public availability of precisely the same information or records at issue. This type of previous determination does not apply to records that are substantially similar to records previously submitted to this office for review, nor does it apply to information that may fall within the same category as any given records on which this office has previously ruled. *See* Open Records Decision No. 673 (2001).

The information at issue in this case is not subject to a previous determination under section 552.301(a). The records that are the subject of the present request, quarterly prescription information for the year 2001 through the present, are not precisely the same records as the quarterly prescription information for the years 1998 and 1999 addressed in Open Records Letter No. 99-1421. Accordingly, the records at issue may not be withheld pursuant to a previous determination of this office. Thus, the commission is required to seek a decision from this office regarding whether the information at issue may be withheld from disclosure pursuant to an exception under the Act. You claim the information is excepted from disclosure under section 552.101 of the Government Code. We will address your arguments under section 552.101.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. You explain that the requested information relates to persons receiving Medicaid assistance. You argue that all of the submitted information must, therefore, be withheld because it is confidential Medicaid information under section 12.003 of the Human Resources Code. Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties. [Emphasis added.]

In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977). You state that the documents relate to clients, applicants, and recipients of the assistance programs and that release here is not for the administration of the Texas Medicaid Vendor Drug Program. Accordingly, we determine that the documents at issue must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171526

Enc: Submitted documents

c: Ms. Terri Bernacchi
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(w/o enclosures)